Supreme Court, U.S.
FILED
APR 24 2006
OFFICE OF THE CLERK

No. 05-1357

In The
Supreme Court of the United States

J. CHRIS SEAMAN,

Petitioner,

v.

JOHN GARAMENDI,
AS INSURANCE COMMISSIONER, ET AL.,

Respondents.

On Petition For Writ Of Certiorari To The Court Of Appeal Of The State Of California, Second Appellate District, Division Two

PETITION FOR WRIT OF CERTIORARI

ERWIN CHEMERINSKY
Counsel of Record
DUKE UNIVERSITY SCHOOL OF LAW
Science Drive & Towerview Rd.
Durham, North Carolina 27708
(919) 613-7173

HENRY A. KNEBEL
LAW OFFICES OF HENRY KNEBEL
23822 W. Valencia Blvd., Suite 304
Valencia, California 91355
(661) 799-3600

PAUL HOFFMAN
MICHAEL D. SEPLOW
SCHONBRUN DESIMONE SEPLOW HARRIS & HOFFMAN LLP
723 Ocean Front Walk
Venice, California 90201
(310) 396-0731

Attorneys for Petitioner

COCKLE LAW BRIEF PRINTING CO. (800) 225-6964
OR CALL COLLECT (402) 342-2831

QUESTION PRESENTED

Whether due process is violated when the government illegally seizes a business and bars its chief executive officer from continued involvement without any notice, without a hearing before or after the seizure, and with judicial review of constitutional claims only on the issue of whether the government agency abused its discretion in denying relief.

TABLE OF CONTENTS

	Page
Question Presented	i
Table of Authorities	iii
Opinions Below	1
Statement of Jurisdiction	1
Constitutional Provision Involved	1
Statement of the Case	1
Statement of the Facts	3
Reasons for Granting the Writ	8
THIS COURT SHOULD GRANT REVIEW TO RESOLVE AN ISSUE OF NATIONAL IMPORTANCE, WHICH HAS DIVIDED THE FEDERAL AND STATE COURTS, CONCERNING THE DUE PROCESS REQUIRED WHEN THE GOVERNMENT SEIZES THE ASSETS OF BUSINESSES AND THEIR EMPLOYEES	8
Conclusion	15

TABLE OF AUTHORITIES

Page

CASES

Andre v. Beha, 211 App.Div. 380, 208 N.Y.S. 65 (1925) 14

Bennett v. Spear, 520 U.S. 154 (1997) 9

Cedar Rapids Engineering Co. v. Haenelt, 39 A.D.2d 275, 333 N.Y.S.2d 953 (App.Div. 1972) 12

Commonwealth ex rel. Denny v. Hargis Bank & Trust Co., 233 Ky. 801 (1930) 14

First Bank v. State, Department of Regulatory Agencies, Inc., Div. of Banking, 852 P.2d 1343 (Colo. 1993) 14

Fuentes v. Shevin, 407 U.S. 67 (1972) 10

Gentry v. Lee's Summit, Missouri, 10 F.3d 1340 (8th Cir. 1993) 11

Leveto v. Lapina, 258 F.3d 156 (3d Cir. 2001) 11, 12

Northeastern Florida Contractors v. Jacksonville, 508 U.S. 656 (1993) 9

Olympic Forest Products, Inc. v. Chaussee Corp., 82 Wash.2d 418, 511 P.2d 1002 (1973) 12

Porter v. Diblasio, 93 F.3d 301 (7th Cir. 1996) 11

Rhode Island Insurance Co. v. Downey, 95 Cal.App.2d 220, 212 P.2d 965 (1949) 13

Withrow v. Larkin, 421 U.S. 35 (1975) 11

STATUTES

California Insurance Code, §1011 ..... 12, 13

California Insurance Code, §1013 12

California Insurance Code, §1032 3

OPINIONS BELOW

A copy of the unpublished decision of the Court of Appeal of the State of California is included as the Appendix to this Petition for Certiorari at page 1 (hereafter "App."). The unpublished decision of the Superior Court of the State of California is included at App. 22. A copy of the order of the Supreme Court of California denying review of the California Court of Appeal's decision is included at App. 55.

STATEMENT OF JURISDICTION

Pursuant to 28 U.S.C. § 1257, this Court has jurisdiction to review the October 26, 2005 decision of the Court of Appeal of the State of California, following a denial of discretionary review by the Supreme Court of California on January 25, 2006.

CONSTITUTIONAL PROVISION INVOLVED

"No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." U.S. Constitution, Amendment XIV.

STATEMENT OF THE CASE

On March 3, 2000, the Insurance Commissioner of California, entered premises leased by Superior National

Insurance Group, Inc. ("Superior National"), and seized the assets and operations of the entire group, insurance and non-insurance companies alike. Petitioner J. Chris Seaman was the chief executive officer of both Superior National, a holding company, and its subsidiaries. Without a warrant, agents of the Insurance Commissioner and at least one armed officer seized Seaman in his private office on Superior National's premises and escorted him (and other senior executives) off Superior National's premises. They forced Seaman to open his briefcase for inspection and leave his laptop computer, took his office keys and security card, and prevented him from entering Superior National's offices. This precluded Seaman from associating with colleagues and employees, including those who worked in businesses over which the Commissioner had no jurisdiction. The Insurance Commissioner took full control over Superior National and its subsidiaries and ultimately disposed of their assets.

On May 20, 2001, Seaman filed with the Insurance Commissioner three proofs of claim seeking compensation for his loss. One of the claims was for violation of his constitutional rights, including "the illegal search and seizure . . . of property and person of J. Chris Seaman without a warrant or probable cause, and . . . deprivation of property without due process of law."

The Commissioner did not respond to Seaman's claims for nearly two years, until Seaman demanded and the Superior Court ordered a response. Without conducting an administrative hearing on the claim, the Commissioner finally responded on April 23, 2003, denying the claims and all relief.

In July, 2003, Seaman applied under California Insurance Code §1032 for orders to show cause why his claims should not be granted. The trial court remarked at the hearing that "[n]obody seems to have a clear and simple answer of what the procedure is, and exactly how it should be approached," Tr. B-95:11-14, but nonetheless upheld the Commissioner's actions. (App. at 22). The California Court of Appeal affirmed the trial court. (App. at 1). The California Supreme Court denied review. (App. at 55).

STATEMENT OF FACTS

Petitioner J. Chris Seaman was chief executive officer of both Superior National Insurance Group, Inc. ("Superior National"), a holding company, and its subsidiaries. The Superior National subsidiaries that provided actual insurance coverage relied on other Superior National group companies for marketing, underwriting, claims handling, accounting, data processing, and other necessary services. This form of organization, common in the industry and subsequently approved by the Commissioner, is particularly appropriate when non-insurance companies in the group have service-related business with insurers other than their own insurance companies as Superior National did. (Appendix to Petition for Review in the California Supreme Court (hereafter "Appendix"), 155:1-5, 164:17-23, 877:15-20).

Seaman, an established insurance executive, had a contract with Superior National and its non-insurance company subsidiaries that conferred on him expectations of monetary reward and economic advantage.

In 1998, Superior National purchased Business Insurance Group, Inc., and its four subsidiary workers compensation insurance companies. The following year, Superior National reorganized its subsidiaries to consolidate operations, but it also discovered that the newly-purchased Business Insurance Group companies' finances were much weaker than the seller had represented. After unraveling their finances, Seaman notified the Commissioner on February 28, 2000, that the newly-purchased companies were financially impaired, and met with Insurance Department officials about effecting an orderly conservation of the insurance companies. Seaman was concerned that the Superior National group's significant non-regulated operations might be harmed by a conservator's acts or court orders directed at the impaired insurance subsidiaries, and that overreaching by the Insurance Commissioner might injure not only the insurance companies and the non-conserved Superior National companies, but also consumers and policy holders.

Despite Seaman's efforts toward an orderly conservation, on March 3, 2000, the Commissioner's agents and at least one armed law enforcement agent seized the assets and operations of the entire group, insurance companies and non-insurance companies alike. The Insurance Commissioner's agents had neither a warrant nor any court order authorizing their seizure of Seaman or the Superior National insurance or non-insurance companies. Seaman's brief case was searched, his laptop computer was seized, as were his keys and security card. He was barred from the company's offices.

Three days later, the Los Angeles and Sacramento superior courts issued orders appointing the Commissioner conservator of the four seized subsidiaries: Superior

National Insurance Company, Superior Pacific Casualty Company, California Compensation Insurance Company, and Combined Benefits Insurance Company. On June 9, 2000, the Commissioner conserved Commercial Compensation Casualty Company. (Appendix at 503).

No order gave the Commissioner authority over Seaman's person or property. No order gave the Commissioner authority over assets the five conserved insurance companies ("the Insurance Companies") did not own, or power to seize, conserve, liquidate or interfere with Superior National, SN Insurance Services, Inc., Business Insurance Group, Inc., or SN Insurance Administrators, Inc.

Nonetheless, the Commissioner seized Seaman in his private office and his private property. The Commissioner seized property belonging to companies that were never in conservation: Superior National leased the seized premises and owned most of the records and other property there. The Commissioner directed employees at the Superior National offices to work for the conserved Insurance Companies, even though they were employed by the non-conserved companies. (Appendix 159 ¶31(g)). The Commissioner seized 19 Superior National offices that were not subject to any court order and not leased or owned by any Insurance Company. Sixteen of them were not in California. (Appendix 826:19-22 and 856). The Commissioner illegally appropriated Superior National tax returns and distributed them to third parties. (Appendix 160 ¶31(j)). All these acts prevented Seaman from performing his contract with Superior National.

The Insurance Commissioner took more than $20,000,000 in assets, including cash, belonging to non-conserved

companies. (Appendix 158 ¶31(b)). These actions forced four Superior National companies that were not in conservation – Superior National Insurance Group, Inc., SN Insurance Services, Inc., Business Insurance Group, and SN Insurance Administrators, Inc. – to file Chapter 11 bankruptcy petitions.

Just as the Insurance Commissioner seized assets of non-conserved companies that were not subject to any court order, he interfered with the non-conserved companies' business and Seaman's livelihood. The Insurance Commissioner took control over the non-conserved companies' employees and repeatedly threatened Seaman with criminal prosecution if he attempted to contact his employees or otherwise performed his duties as CEO. For example:

•SN Insurance Services, Inc., a non-conserved company, had contracts to perform underwriting, administration, and general agency services to unrelated insurers, Centre Insurance, ZC Insurance, and Underwriters Insurance (Appendix 266, 288, 341), a form of business known as "managing general agency." (Appendix 161 §31(p)). Another related entity not in conservation, SN Insurance Administrators, provided claims services to the same unrelated insurers. The Commissioner never attempted to conserve these businesses, which were independent of the conserved Insurance Companies. Instead, the Commissioner simply ordered employees to stop providing services under the agreements, thus destroying the managing general agency business, and Seaman's livelihood. (Appendix 286). All three unrelated companies sued Superior National companies for breach of contract. (Appendix 328, 371).

•When Seaman was negotiating a business venture between non-conserved Superior National companies and Meadowbrook Insurance Group, the Commissioner's counsel sent Meadowbrook a letter alleging that Meadowbrook "may have received certain of Insurance Companies' proprietary documents from or through the former management of the [Insurance] Companies," and that the information was "illegally disseminated" in violation of a court order. (Appendix 258). The Commissioner never identified any such "proprietary documents." The letter caused Meadowbrook to break off discussions with Seaman, destroying an opportunity to resurrect the managing agency business.

•The Insurance Commission told all managers, including those of non-conserved companies, that they must take orders from the Commissioner and not Seaman, the CEO.

•The Insurance Commissioner directly interfered with Seaman's performing his duties for non-conserved companies, including by threatening to prosecute him for contacting his employees or acting to protect the interests of the non-conserved companies.

•A July 1, 2000 Superior Court order made the Kemper Group the successful bidder in an auction that included assets belonging to non-conserved Superior National companies. In a September 2000 settlement that the Commissioner and Kemper made with the non-conserved Superior National companies, the parties agreed on the assets to be transferred and gave each other limited releases. Seaman was not a party to the settlement.

On May 1, 2001, Seaman filed claims with the Insurance Commissioner. The Commissioner did not respond for over two years and did so only when ordered to do so by

the Superior Court. Without conducting any form of administrative hearing, the Commissioner rejected these claims on April 10, 2003. (Appendix 229). The Commissioner said that the claims could not be considered because he did not anticipate having any assets to satisfy the claims.

Seaman then filed in the Superior Court, pursuant to Insurance Code §1032, a request for an order to show cause why his claims should not be granted. The Superior Court concluded that Insurance Commissioner had the authority to seize the companies without court order. (App. at 51). The Court of Appeal affirmed the decision of the Superior Court. The Court of Appeal held that Insurance Commissioner had not abused its authority in seizing the assets (App. 8-12) and that the seizure of Seaman did not violate the Fourth Amendment because he was present "not as an individual but rather in his capacity as an executive officer of Seized Insolvent Companies." (*Id.* at 18). The California Supreme Court denied review on January 25, 2006. (App. at 55).

REASONS FOR GRANTING THE WRIT

THIS COURT SHOULD GRANT REVIEW TO RESOLVE AN ISSUE OF NATIONAL IMPORTANCE, WHICH HAS DIVIDED THE FEDERAL AND STATE COURTS, CONCERNING THE DUE PROCESS REQUIRED WHEN THE GOVERNMENT SEIZES THE ASSETS OF BUSINESSES AND THEIR EMPLOYEES.

Across the country, government officials, like the Insurance Commissioner, in this case, are seizing the assets of businesses they regulate. Often, at the time of

seizure, the executives of the company are also seized, as are their possessions. This case thus poses an issue of national importance: what does due process require under such circumstances? Must there be a court order before the seizure of property and persons? After seizure, what type of hearing must be provided? Is due process satisfied by allowing the government agency to determine the constitutionality of its own actions, with review in the courts only on an abuse of discretion standard?

This case, unfortunately, is not atypical. An individual and his possessions were physically seized, and assets of businesses were seized without any court order. Much of the assets seized belonged to non-conserved companies beyond the powers of the Insurance Commissioner. No post-seizure administrative hearing was ever held. The Insurance Commissioner rejected the claims by letter without any form of hearing whatsoever.* Judicial review then, including for constitutional claims, was limited to whether the Insurance Commissioner had abused his discretion.

At the very least, this Court should grant review to decide whether this process complies with this Court's

---

* The California Court of Appeal also held that Seaman lacked standing to raise the claims presented. (App. at 18). This is clearly wrong because Seaman unquestionably was injured by the seizure of his person and property and also by the loss of his livelihood; this was caused by the Insurance Commissioner's actions; and these injuries would be redressed by a favorable court decision in this case. *See, e.g., Bennett v. Spear*, 520 U.S. 154, 167 (1997); *Northeastern Florida Contractors v. Jacksonville*, 508 U.S. 656, 663 (1993) (articulating the requirements for standing as injury, causation, and redressability). Since Seaman is asserting injuries that he personally suffered as a result of the Insurance Commissioner's actions, he has standing.

prior decisions requiring due process when a person or property is taken by the government. For example, in *Fuentes v. Shevin*, 407 U.S. 67, 79 (1972), this Court explained that "[f]or more than a century, the central meaning of procedural due process has been clear: 'Parties whose rights are to be affected are entitled to be heard; and in order that they may enjoy that right they must be first notified.' It is equally fundamental that the right to notice and an opportunity to be heard 'must be granted at a meaningful time and in a meaningful manner.'" (citations omitted). This Court explained that "[i]f the right to notice and a hearing is to serve its full purpose, then, it must be granted at a time when the deprivation can still be prevented." *Id.* at 81.

The decisions of the California courts in this case cannot be reconciled with this simple command. The Insurance Commissioner seized businesses without court order and without notice or a hearing. When a proof of claim was filed, the Insurance Commissioner said that it was too late; no assets remained to satisfy it. Even this decision was made without any hearing. This Court should grant review to determine whether the type of process followed in this case, and which is used by government officials across the country in seizing businesses, meets the requirements of due process of law.

Nor can the procedures followed in California be reconciled with this Court's requirement for an impartial decision-maker. This Court long has recognized that administrative agencies which adjudicate must provide a fair hearing in an impartial tribunal. Combining investigative and adjudicatory functions within an administrative agency violates due process if the facts and circumstances of a particular case demonstrate "the risk of

unfairness is intolerably high." *Withrow v. Larkin*, 421 U.S. 35, 46-47, 55, 58 (1975). Under the process followed by the Insurance Commissioner in this case, the Commissioner is authorized to investigate and adjudicate his own wrongful acts. Such a procedure provides an intolerably high risk of unfairness.

This Court has not yet directly addressed the issue of what due process requires when a business, its assets, and its employees are seized by government regulators. This has resulted in a significant split of authority in the state courts and lower federal courts as to what due process requires under these circumstances.

Many lower courts across the country would have found the actions of the Insurance Commissioner in this case to have violated due process of law. For example, the Eighth Circuit has ruled that the government must provide notice and a hearing before seizure of a business absent exigent circumstances. *Gentry v. Lee's Summit, Missouri,* 10 F.3d 1340, 1345 (8th Cir. 1993) ("In the present case, there is little question that the City could have feasibly resorted to predeprivation procedure. . . . Some form of notice and opportunity for a hearing in this case might have proven very valuable for both sides.") Similarly, in *Porter v. Diblasio*, 93 F.3d 301, 305 (7th Cir. 1996), the Seventh Circuit stressed that "[t]he presumption is that an individual is entitled to notice and an opportunity for a hearing prior to the state's permanent deprivation of a property interest" and held that state regulators were required to provide due process when taking a person's property.

The Third Circuit's decision in *Leveto v. Lapina*, 258 F.3d 156 (3d Cir. 2001), is particularly apt. Agents of the

Internal Revenue Service had search warrants for a veterinarian's home and office. However, the agents in executing the warrants patted down the doctor and his wife, detained them for up to eight hours without reasonable suspicion or probable cause, and closed Dr. Leveto's business. The Third Circuit held that this violated the Constitution, though it concluded that the officers were protected by qualified immunity. Strikingly, in *Leveto*, there were warrants, but still the actions were found unconstitutional. In this case, Seaman and his property were seized without warrants and the assets of the business taken over by the government.

Many state courts have come to similar conclusions that seizure of the assets of a business requires due process. In *Cedar Rapids Engineering Co. v. Haenelt*, 39 A.D.2d 275, 333 N.Y.S.2d 953 (App.Div. 1972), an appeals court in New York found that a sheriff seizing the assets of a business prior notice or opportunity to be heard violated due process. Similarly, in *Olympic Forest Products, Inc. v. Chaussee Corp.*, 82 Wash.2d 418, 511 P.2d 1002 (1973), the Washington Supreme Court held that seizure of assets in a corporation's bank account must be accompanied by due process, including notice and a meaningful opportunity to be heard.

The denial of due process in this case was far more egregious than that invalidated in any of the above decisions.** The Insurance Commissioner's agents and an

** Under California law, there is authority for the immediate, summary seizure of insurance companies, Insurance Code §1013, when it appears to the Insurance Commissioner that the insurer's continued operation is hazardous to the public. Insurance Code §1011. However, under California law, the summary seizure must be followed immediately

(Continued on following page)

armed law enforcement officer came and physically seized Seaman and took his laptop computer without a warrant or court order. Business assets, for which Seaman was the CEO, were seized without due process. When Seaman presented his constitutional claims they were directed to the Insurance Commissioner, who ignored them for two years. When the Insurance Commissioner was ordered to respond by the Superior Court, he rejected Seaman's claims without any form of a hearing. He denied the claims on the ground that there were no assets remaining to cover the claims. Of course, this was largely due to the Insurance Commissioner's dissipating the assets of the seized companies. Review in the California courts was then only on an abuse of discretion standard. In other words, the Insurance Commissioner was the primary decision-maker as to whether the Insurance Commissioner violated the law, including the United States Constitution. Under the authority described above, many courts across the country surely would have found a violation of due process.

But other courts have come to opposite conclusions and likely would have upheld the actions of the Insurance Commissioner in this case. California, for example, has long upheld the type of actions taken by Insurance Commissioner in this case, seizing businesses without any due process. In *Rhode Island Insurance Co. v. Downey*, 95 Cal.App.2d 220, 212 P.2d 965 (1949), the Insurance Commissioner received an ex parte judicial order, without notice, making him conservator of the insurance company. The application for the order was served on the insurance

---

with a hearing under §1011; here there was no subsequent hearing authorizing the Commissioner's seizure of the businesses.

company at the same time the Commissioner seized the company's assets. The Court of Appeal found that the California Insurance Code allows for a seizure by the commissioner without any hearing or any court order. The court rejected the insurance company's due process argument and upheld the power to seize without due process.

The California court relied on an earlier New York decision, *Andre v. Beha*, 211 App.Div. 380, 208 N.Y.S. 65 (1925), which upheld New York's Superintendent of Insurance seizing control of the assets of a Russian insurance company without any due process. The court found that the public nature of the business of private insurance companies allowed for such seizures without any need for due process.

Other states, too, before and after these decisions, have upheld the ability of regulators to seize assets without due process. In *Commonwealth ex rel. Denny v. Hargis Bank & Trust Co.*, 233 Ky. 801 (1930), the Kentucky banking commissioner took possession of a bank for purposes of liquidating its assets. The Kentucky Court of Appeals rejected a constitutional claim and held that the Act did not violate due process by allowing the commissioner to seize and liquidate the bank. Similarly, in *First Bank v. State, Department of Regulatory Agencies, Inc., Div. of Banking*, 852 P.2d 1343 (Colo. 1993), the Colorado Court of Appeals found that there was no violation of due process if regulators go forward with liquidating a bank's assets and then provide the requested hearing.

Regulators of businesses, especially businesses such as insurance and banking, do seize control of these enterprises from time to time. May they do so without any

notice or court order, as was done here? Must there be some form of administrative hearing concerning the seizure, which never occurred here? Is it sufficient that judicial review be limited, as it was here, to whether the government regulator abused its discretion in denying claims against it? These are questions which this Court never has confronted and which are of significant national importance. This Court should grant review to address and resolve these issues.

CONCLUSION

For these reasons, this Court should grant the Petition for a Writ of Certiorari.

Respectfully submitted,

ERWIN CHEMERINSKY
Counsel of Record
DUKE UNIVERSITY SCHOOL OF LAW
Science Drive & Towerview Rd.
Durham, North Carolina 27708
(919) 613-7173

HENRY A. KNEBEL
LAW OFFICES OF HENRY KNEBEL
23822 W. Valencia Blvd., Suite 304
Valencia, California 91355
(661) 799-3600

Attorneys for Petitioner

PAUL HOFFMAN
MICHAEL D. SEPLOW
SCHONBRUN DESIMONE SEPLOW HARRIS & HOFFMAN LLP
723 Ocean Front Walk
Venice, California 90201
(310) 396-0731

2005 WL 2764562

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND DISTRICT

DIVISION TWO

JOHN GARAMENDI, as Insurance Commissioner, etc.,

Plaintiff and Respondent,

v.

SUPERIOR NATIONAL INSURANCE COMPANY,

Defendant;

J. CHRIS SEAMAN et al.,

Claimants and Appellants.

[And four other cases.*]

B172394

(Los Angeles County Super. Ct. No. BS061974)

(Filed Oct. 26, 2005)

APPEALS from a judgment and order of the Superior Court of Los Angeles County. Carl J. West, Judge. Affirmed in part and dismissed in part.

Law Offices of Henry Knebel for Claimant and Appellant J. Chris Seaman.

---

* Garamendi v. Superior Pacific Casualty Co. (No. BS061975); Garamendi v. California Compensation Ins. Co. (No. BS062171); Garamendi v. Combined Benefits Ins. Co. (No. BS062173); Garamendi v. Commercial Compensation Casualty Co. (No. BS063746).

Ben-Zvi & Beck, Paul A. Beck; Robert E. Nagle for Claimants and Appellants William L. Gentz, Robert E. Nagle and Arnold J. Senter.

Bill Lockyer, Attorney General, W. Dean Freeman, Lead Supervising Deputy Attorney General, Mark P. Richelson, Supervising Deputy Attorney General, for Plaintiff and Respondent.

William L. Gentz, Robert E. Nagle and Arnold J. Senter (collectively, GNS) appeal from the judgment denying their respective applications for an order to show cause (OSC) why John Garamendi, Insurance Commissioner of the State of California (Commissioner), should not accept their proofs of claim for paid time off benefits (PTO) as a first priority (Class 1) claim (Ins. Code, § 1033, subd. (a)(1)).[1] GNS also filed a notice of appeal from the order dated February 3, 2004, in which the trial court denied their motion for reconsideration.

J. Chris Seaman appeals from the judgment denying his application for an OSC why the Commissioner should not accept, as Class 1 claims, his proofs of claim for PTO, indemnity, quantum meruit, and damages based on the federal Civil Rights Act (42 U.S.C. § 1983) and tort liability.

---

[1] All further section references are to the Insurance Code unless otherwise indicated.

We affirm the judgment and dismiss the purported appeal of GNS from the order denying the motion for reconsideration.[2]

As we shall discuss, the PTO sought by GNS and Seaman (collectively, claimants) and Seaman's request for indemnity were properly disallowed as proofs of claim under section 1033, and Commissioner did not discriminate against claimants. The remaining relief sought in Seaman's proofs of claim also was properly disallowed. With respect to quantum meruit recovery, damages for tort liability, and unspecified civil rights violations, Seaman failed to comply with the requirement that he set forth "the particulars," or factual underpinnings, of the claim (§§ 1023, subd. (a), 1024.) There was no unconstitutional seizure of Seaman, because he was ejected from the premises as an executive officer under Commissioner's plenary administrative authority. (§§ 1013, 1015.) Seaman lacks standing to file a proof of claim based on Commissioner's seizure and search of property which did not belong to Seaman. Moreover, Seaman's supplemental claims based on invasion of his privacy interest in e-mails were not cognizable, because they were not set forth in a proof of claim (§§1023, subd. (a), 1024).

We conclude that a proof of claim for PTO is properly disallowed where the claimant remained the employee of the insurance holding company after being terminated by Commissioner from his or her position with its wholly owned conserved subsidiary. Commissioner's duty to

---

[2] We consolidated the appeal of Seaman with that of GNS for review and disposition. No appeal from the judgment was taken by the other four claimants: Thomas Boggs; Louis Caron; Edward Shoop; and Douglas Roche.

investigate the merits of a proof of claim does not arise until (and unless) claimant makes a threshold showing of the particulars (facts) underlying the proof of claim. Additionally, a claimant is foreclosed from raising a new claim in the OSC proceeding, because a proof of claim presented to Commissioner in the first instance is a prerequisite to judicial relief.

FACTUAL AND PROCEDURAL SUMMARY

Superior National Insurance Group, Inc. (SNIG) was an insurance holding company.[3] (See § 1215 et seq. [Insurance Holding Company System Regulatory Act].) SNIG owned SN Insurance Administrators, Inc. (SNIA) and SN Insurance Services, Inc. (SNIS). SNIA administered workers' compensation claims. SNIS served as "a managing general agent, providing underwriting and marketing services for its insurance company clients."

On December 10, 1998, SNIG acquired Business Insurance Group, Inc. (BIG)[4] and thereby acquired the following BIG wholly owned subsidiaries: (1) Superior National Insurance Company (SNIC); (2) Superior Pacific Casualty Company (SPCC); (3) California Compensation Insurance Company (CalComp); (4) Combined Benefits Insurance Company (CBIC); and (5) Commercial Compensation Casualty Company (CCCC; collectively, Insolvent Companies). The primary business of Insolvent Companies was to write workers' compensation policies.

---

[3] Superior National Litigation Trust (SNLT) was SNIG's successor in interest.

[4] SNLT Holdings Corporation was the successor to BIG, SNIA and SNIS.

From July 1991 until July 1999, Seaman was the chief financial officer of SNIG. In July 1999, he became SNIG's (and later its successor SNLT's) president and chief executive officer. He subsequently also became president and chief executive officer of Insolvent Companies.

From June 1, 1994, through June 30, 1999, Gentz was president and chief executive officer of SNIG. On July 1, 1999, he became chairman of the board of SNIG. He later also became chairman of the board for Insolvent Companies. From March 6, 2000, through October 30, 2001, he was chairman of the board of SNLT.

From January 1996, through March 6, 2000, Nagle was senior vice-president, general counsel and secretary of SNIG. He subsequently also served in these capacities with Insolvent Companies. From March 8, 2000, he was senior vice-president, general counsel and secretary of SNLT until June 30, 2002, when his employment was terminated.

Beginning February 1997, Senter was executive vice-president and chief operations officer of SNIG and later also with Insolvent Companies. From March 12, 2000, through October 30, 2001, he was executive vice-president and chief operations officer of SNLT.

On March 3, 2000, a Friday, Commissioner seized four Insolvent Companies: SNIC, SPCC, CalComp and CBIC (collectively, Seized Insolvent Companies) pursuant to his summary seizure authority under section 1013. It was his custom and practice immediately after seizure to terminate the executive management in order to prevent removal of assets, destruction of data, and spoliation of evidence. In this instance, Commissioner terminated all senior executives and removed them from the premises of

Seized Insolvent Companies. Seaman was told specifically that he would not have a management role in Seized Insolvent Companies.

On Monday, March 6, 2000, the trial court issued orders appointing Commissioner the conservator of Seized Insolvent Companies.

By letter dated March 8, 2000, Commissioner informed Nagle and Seaman they were terminated as employees of Seized Insolvent Companies effective March 6, 2000.

On June 9, 2000, the court appointed Commissioner the conservator of CCCC, the remaining Insolvent Company, and consolidated all five conservation proceedings.

On April 26, 2000, SNIG, BIG, SNIA, and SNIS filed a voluntary petition for reorganization before the bankruptcy court. Seaman was SNIG's chief executive officer for purposes of its reorganization. Meanwhile, SNIG continued to manage its affairs and operate its business as a debtor in possession.

On September 26, 2000, about six months after seizure, the court determined each Insolvent Company was insolvent, terminated Commissioner as conservator, and appointed him liquidator of Insolvent Companies.

In May 2001, Gentz, Nagle and Senter each submitted a single proof of claim in the respective amounts of $1,365,405.54, $734,994.58, and $1,063,290.82 and for unspecified amounts based on alleged entitlement to PTO and various legal theories for damages and indemnity.

Seaman submitted three separate proofs of claim, respectively, for: (1) unspecified "[d]amages for wrongful

termination of employment, tortious interference with employment (including but not limited to seizure and ejection), libel and slander, breach of employment agreement, including but not limited to salary, benefits, bonuses, and other remuneration"; (2) "[a]t least $60 million" for indemnification "as an employee or director of" Insolvent Companies regarding certain litigation; and (3) $100 million as "damages for civil rights violations."

Commissioner rejected all proofs of claim.

Claimants filed applications for an OSC why their proofs of claim should not be allowed as Class 1 claims ("Expenses of administration"). (§ 1033, subd. (a)(1).) Seaman also filed supplemental pleadings asserting newly discovered constitutional and statutory violations regarding his privacy interests in certain e-mails.

In its "Statement of Decision and Orders on OSC," the trial court (J. West) upheld Commissioner's rejection of the proofs of claim.

On February 3, 2004, the court denied GNS's motion for reconsideration but allowed their PTO proofs of claims as Class 6 claims ("Claims having preference by the laws of this state") (§ 1033, subd. (a)(6)) to the extent they were "not otherwise considered by the Bankruptcy Court in [SNIG's] bankruptcy proceedings."

STANDARD OF REVIEW

"In these special proceedings for an insurer in conservation, the actions of the Commissioner are subject to judicial review, but not de novo review. The trial court reviews them under an abuse of discretion standard, asking if the action was arbitrary, i.e., unsupported by a

rational basis, contrary to specific statute or discriminatory. We also test the action of the trial court by an abuse of discretion standard, employing the equivalent of the substantial evidence test by accepting the trial court's resolution of credibility and conflicting substantial evidence, and its choice of possible reasonable inferences. [Citation.] Thus our review of factual matters is highly deferential. While the court below issued a written ruling, these special proceedings do not require written findings of fact or conclusions of law. [Citation.]" (*Low v. Golden Eagle Ins. Co.* (2003) 110 Cal.App.4th 1532, 1544.) Nonetheless, we follow the "familiar rule that permits us to imply any findings which are necessary to support the trial court's order, so long as any such implied findings are themselves supported by substantial evidence. [Citation.]" (*Massachusetts Mutual Life Ins. Co. v. Superior Court* (2002) 97 Cal.App.4th 1282, 1287-1288; see also *Low v. Golden Eagle. Ins. Co., supra,* at p. 1544 [infer "reasonable findings" while rejecting "possible contrary findings"].)

DISCUSSION

I. Rejection of PTO Proofs of Claim Not Abuse

Claimants contend their PTO proofs of claims[5] should have been allowed as Class 1 claims, because they were terminated as employees of Seized Insolvent Companies by Commissioner. The fatal flaw in their position is their "termination" did not trigger entitlement to PTO.

---

[5] The respective asserted PTO amounts were: $24,267.06 (Gentz); $17,208.62 (Nagle); $21,406.37 (Senter); and $26,504.25 (Seaman).

Pursuant to their 1999 employment contracts, claimants were entitled to PTO. The SNIG Employee Handbook addressed how PTO was calculated and accrued and stated there would be "no cash out" of PTO, which would be paid, instead, upon termination or resignation.

Claimants disavow any intent to seek recovery of PTO pursuant to their employment contracts. Rather, their position is that, as a matter of law, they are entitled to PTO under the Labor Code, because they were terminated from their employment. (See Lab Code, §§ 201, 227.3; see also *Suastez v. Plastic Dress-Up Co.* (1982) 31 Cal.3d 774.)

The determinative issue is whether claimants were terminated from their employment for the purpose of PTO when Commissioner fired them as employees of Seized Insolvent Companies. The answer is no. As we shall discuss, the actual employer of claimants was SNIG, not Seized Insolvent Companies, and although claimants were removed from their positions as employees of these companies, they were not terminated from their employment with SNIG.

The conclusion that SNIG was the employer of claimants is consistent with the statutory provisions applicable to insurance holding companies. In this context, the concept of Seized Insolvent Companies as autonomous entities separate and apart from SNIG is unsupported by law. Pursuant to the Insurance Holding Company System Regulatory Act, an insurance holding company, i.e., SNIG, controls its subsidiaries, i.e., Seized Insolvent Companies, either directly or indirectly through one or more intermediaries. (See § 1215, subds. (a)-(f).)

SNIG did not conduct any insurance business. Rather, the writing of insurance policies was carried out by its

subsidiaries, the Seized Insolvent Companies. Although claimants were considered employees of these companies, a plain reading of the employment contracts reveals they were in fact hired by SNIG, a signatory to the contracts, as employees both for SNIG and the Seized Insolvent Companies. Seaman's position was president and chief executive officer of SNIG "and subsidiaries." Gentz was chairman of the board for both SNIG "and subsidiaries." Nagle was senior vice president, general counsel, and secretary of SNIG "and subsidiaries." Senter was executive vice-president and chief operating officer of SNIG "and subsidiaries."

The fact these contracts provided that reference to SNIG included its subsidiaries is inconsequential. The Seized Insolvent Companies were not signatories to these contracts. Thus, the employer of claimants was SNIG, not Seized Insolvent Companies. (See *Integral Development Corporation v. Weissenbach* (2002) 99 Cal.App.4th 576, 580-582, 586-587; see also *E.M.M.I. Inc. v. Zurich American Ins. Co.* (2004) 32 Cal.4th 465, 470 [interpretation of contract as question of law subject to de novo review].)

Moreover, no evidence was presented that claimants were paid a salary or accrued PTO as employees for Seized Insolvent Companies (collectively or individually) separate and apart from the salary and PTO they earned as SNIG employees.

In addition, after being terminated from Seized Insolvent Companies, claimants continued to be employed by SNIG, and the PTO at issue was carried forward by SNIG. At the OSC hearing, Mr. Beck, GSN's attorney, admitted "final paychecks were not issued." Mr. Weiss, an attorney for Commissioner, argued claimants "did not get

a final paycheck because [each had not been] terminated as an employee from [SNIG]." Mr. Knebel, Seaman's attorney, admitted claimants "were paid afterwards by SNIG."

Mr. Beck countered that "[t]he paychecks continued but the PTO went back to 0. It started over again." When asked by the trial court for evidence to support his position, he stated he did not know if anything had been filed with the court in this regard and added that they "did not raise that particular issue affirmatively in [their] response." He further stated he was sure he could give the court something to support his point if given the opportunity." The record does not reflect any evidence was submitted.

Based on the above, it is evident that Commissioner's termination of claimants from Seized Insolvent Companies was not the type of employment termination which triggered entitlement to PTO under the Labor Code. We conclude that a proof of claim for PTO is properly disallowed where, as here, the claimant remained the employee of the insurance holding company after claimant was terminated by Commissioner from his position with its wholly owned subsidiary, which was the entity subject to conservation and then liquidation. Accordingly, the trial court did not abuse its discretion in refusing to allow claimants' proofs of claim for PTO under section 1033.[6]

---

[6] We therefore do not reach claimants' companion contention that in conjunction with PTO, they were entitled to interest along with penalties, costs and attorney fees pursuant to the Labor Code. (See Lab. Code, §§ 203, 218.5, 218.6.)

Moreover, we do not address whether the PTO at issue was paid by means of the Kemper Settlement Agreement or in SNIG's bankruptcy

(Continued on following page)

II. Rejection of PTO Proofs of Claims Not Discriminatory

Claimants contend Commissioner impermissibly discriminated against them, because he allowed the same PTO as proofs of claims Class 1 ("Expenses of administration") (§ 1033, subd. (a)(1)) for other employees of the Seized Insolvent Companies. They argue that Commissioner therefore must pay their PTO or retrieve the same PTO paid to the other employees. The record does not demonstrate any discrimination. (See, e.g., *In re Executive Life Ins. Co.* (1995) 32 Cal.App.4th 344, 358; cf. *Commercial Nat. Bank v. Superior Court* (1993) 14 Cal.App.4th 393, 409, 416.)

We conclude a rational basis existed for distinguishing between claimants and the other employees, who were not similarly situated. The record contains ample evidence to support the inferences that Commissioner needed these employees to assist him with the administration of Seized Insolvent Companies and that payment of this PTO was to induce the employees to remain. Payment of PTO to claimants as expenses of administration was not warranted, because they would not be performing any services on behalf of Seized Insolvent Companies.

Whether claimants are considered to have been terminated officially on March 3, March 6, or March 8 is inconsequential. The fact remains that on March 3, Commissioner took over Seized Insolvent Companies and terminated claimants, who thereafter did not perform services as employees of these companies.

---

proceeding or whether it remains an issue pending between SNIG and claimants, which matters are not before us.

In contrast, it is undisputed that Commissioner retained the employees of Seized Insolvent Companies whose pre-conservation PTO was allowed, and the court approved Commissioner's application for authority, as liquidator, to implement a PTO program for these employees as a condition of continued employment.

In its order, the court (J. Rothschild) authorized Commissioner to implement the PTO program by paying SNIC "in Liquidation employees the Pre-Liquidation PTO they have earned"; allowing these employees "to continue to earn and accumulate PTO, from October 1, 2000, until the termination of liquidation"; and paying employees the "Post-Liquidation PTO they have earned and will earn."

III. Denial of Motion to Reconsider Not Appealable

GNS purports to appeal from the February 3, 2004, rulings of the trial court. We dismiss the appeal from this order denying their motion for reconsideration (Code Civ. Proc., § 1008), which is nonappealable. (See, e.g., *Crotty v. Trader* (1996) 50 Cal.App.4th 765, 768-769.)

IV. Rejection of Indemnity Proof of Claim Not Abuse

Seaman's indemnity proof of claim arises from a lawsuit by Insurance Corporation of Hannover, inter alia, against SNIG, BIG, Seaman, and Centre Reinsurance Limited (Centre) (Super. Ct. L.A. County, No. BC 252963; Hannover Action.) Disallowing this proof of claim was not an abuse of discretion.

The record reflects Seaman was not an employee of Insolvent Companies at the time he allegedly committed the charged wrongdoing, and that his entitlement to seek indemnity, instead, arose from his status as an executive employee of SNIG. (See, e.g., *Channel Lumber Co. v. Porter Simon* (2000) 78 Cal.App.4th 1222, 1226-1227; Corp.Code, § 317, subd. (b); Lab.Code, § 2802, subd. (a).)

In the Hannover Action, Seaman was alleged to have been SNIG's Chief Financial Officer and Chief Executive Officer. He was alleged to have acted as the agent for CBIC, CalComp, and CCCC (three of Insolvent Companies) in procuring reinsurance coverage from plaintiffs. Insolvent Companies, however, were not parties in the Hannover Action. Moreover, Seaman allegedly committed the charged wrongful conduct during the placement of the reinsurance contract in November 1998, which was prior to the date plaintiffs entered into the reinsurance contract and prior to SNIG's acquisition of these three Insolvent Companies, and thus, prior to Seaman's employment with Seized Insolvent Companies.

In light of the above, the trial court was entitled to infer Seaman incurred no defense costs and was not subject to any liability as a director or employee of the three Insolvent Companies. The court therefore properly disallowed Seaman's indemnity proof of claim.[7]

---

[7] We note the bankruptcy court already approved payment of $35,000 for Seaman's incurred defense costs and allowed $150,000 more earmarked for the Seaman Defense Fund.

V. Proofs of Claims Lacking "Particulars" Fatally Defective

With respect to his claims for quantum meruit and damages for tort liability,[8] Seaman failed to comply with the requirement that the proof of claim be set forth with particularity (§§ 1023, subd. (a), 1024.) The proof of claim was defective for the same reason with respect to the asserted unspecified civil rights violations.

The burden is on the claimant to describe the factual basis for his or her claim. "A claim must set forth, under oath, on the form prescribed by the commissioner . . . [t]he *particulars thereof.*" (§ 1023, subd. (a), italics added.) Seaman failed to carry his burden.

The proofs of claim were deficient on their face. The legal theories, although identified, had no factual support. (See *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318 [in determining whether complaint pled sufficient facts to state a cause of action, court considers demurrer "'as admitting all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law'"]; cf. *Santee v. Santa Clara County Office of Education* (1990) 220 Cal.App.3d 702, 713 [tort claim (Gov.Code, § 910) considered valid "if it substantially complies with all of the statutory requirements for valid claim even though it is technically deficient in one or more particulars"]; see also *Loehr v. Ventura County Community College Dist.* (1983) 147 Cal.App.3d 1071, 1083 ["court must ask whether sufficient information is disclosed on the face of the filed

[8] The torts relied on by Seaman were: interference with contractual relations and prospective economic advantage and abuse of process.

claim 'to reasonably enable the public entity to make an adequate investigation of the merits of the claim and to settle it without the expense of a lawsuit.' (*City of San Jose v. Superior Court* (1974) 12 Cal.3d 447, 456.)"]; see generally, Gov.Code, §§ 810 et seq. [Tort Claims Act].)

Seaman attempts unsuccessfully to circumvent this prerequisite in two ways. He argues the proof of claim form itself was defective, because it did not ask for a description of the claim and only four lines of the one-page form were provided for the claimant to set forth the claim. There was no infirmity. As Seaman himself acknowledges, the form expressly instructed the claimant to "attach additional sheets if needed."

He further argues that Commissioner was placed on notice of the factual underpinnings by virtue of the more than 100 pages of objections he filed. We disagree. Seaman's proofs of claim were filed in May 2001. On December 5, 2002, about a year and a half later, he filed an objection to Commissioner's application, as liquidator, to disburse certain assets of Insolvent Companies' estates. Included was a 13-page document entitled "Statement of Causes" Seaman identified as a "description in pleading format of the causes that underlie the claims that he has submitted in this proceeding." He did not submit the document in support of his proofs of claim. Rather, he provided the document "to help" the trial court in deciding whether "to order the parties to more fully brief and present evidence to the Court relating to the inadequacy of the Liquidator's Application."

VI. Proper Proof of Claim Prerequisite to Duty to Investigate

Seaman contends disallowing his proof of claim based on tort liability was an abuse of discretion, because Commissioner rejected it nearly two years after it was filed "without investigating [its] merits." There was no abuse.

We conclude that a proper proof of claim is a condition precedent to Commissioner's duty to investigate its merits. A proper proof of claim filed with Commissioner is a prerequisite to allowance. (See, e.g., §§ 1021, 1024.) At a minimum, the proof of claim must set forth "[t]he particulars thereof." (§ 1023, subd. (a).) Accordingly, no duty to investigate a proof of claim arises until (and unless) the claimant places Commissioner on notice of its factual underpinnings.

VII. Proof of Claim Based on Illegal Search and Seizure Not Cognizable

In his third proof of claim, Seaman sought damages under the federal Civil Rights Act (42 U.S.C. § 1983) and for constitutional violations (U.S. Const., 4th & 14th Amends.); Cal. Const., art. I., § 7) arising from Commissioner's takeover of Seized Insolvent Companies and ejection of Seaman from the premises on March 3, 2000.

Seaman contends his proof of claim should have been allowed based on the illegal seizure of his person and the illegal search and seizure of his property "and property of the companies for which he worked." No abuse of discretion arose from rejection of this proof of claim.

Initially, we conclude Seaman was not seized within the meaning of the federal Constitution (U.S. Const., 4th

Amend.). (See, e.g., *People v. Hester* (2004) 119 Cal.App.4th 376, 385.) He was "seized" (ejected) from the premises not as an individual but rather in his capacity as an executive officer of Seized Insolvent Companies under Commissioner's plenary administrative authority (§§ 1013, 1015; see *In re Executive Life Ins. Co., supra,* 32 Cal.App. 4th at p. 376 [limitation of Commissioner's authority in exercising state's police power is "its exercise [must] be reasonably related to the public interest in rehabilitating the insurer [citation] and not be arbitrary or improperly discriminatory [citation]"; see also *Maloney v. American I.M. & H. Assn.* (1953) 119 Cal.App.2d 319, 326 [Insurance Code summary seizure provisions not violative of "constitutional guarantees against search and seizure"].)

We further conclude that Seaman lacked standing to assert this proof of claim to the extent the property searched and seized belonged to another (Seized Involuntary Companies and/or SNIG). (Cf. *De La Cruz v. Quackenbush* (2000) 80 Cal.App.4th 775, 783-785; *United States v. Hopps,* (1962) 215 F.Supp. 734, 751.) Seaman failed to describe with particularity any specific item of property which belonged to him personally. Rather, the property identified belonged, instead, to Seized Insolvant Companies or SNIG (or both).[9]

The record reflects there was an apparent commingling of property as to SNIG and Seized Insolvent Companies.[10] The seized premises were occupied both by SNIG

---

[9] We note the SNIG Employee Handbook admonished "[a]ll work created using company equipment or facilities belong[s] to the company."

[10] Similarly, there existed some confusion regarding the employment status of the Seized Insolvent Companies' employees on the date of the takeover. On January 1, 2000, Senter, Seaman and another

(Continued on following page)

and Seized Insolvent Companies. Seaman considered the premises and personal property located there as belonging to SNIG. In a declaration, he stated Commissioner "physically ejected SNIG senior management from their noninsurance company offices." In another, he stated that Commissioner "removed SNIG's management from their responsibilities for these [Seized Insolvent Companies] and ejected them from the SNIG headquarters." He further stated that Commissioner physically took over "SNIG's offices, ordered SNIG's officers and directors physically removed from their offices, and has seized many of SNIG's assets, including its books and records, and [Commissioner] essentially commandeered SNIG's workforce and instructed SNIG's employees to take direction only from [him]."

Although acknowledging the interrelationship between SNIG and Seized Insolvent Companies, Seaman argued Commissioner was not justified in seizing assets which did not belong to these companies. Standing, however, is vested in SNIG, not Seaman, to assert any unlawful search or seizure (or both) of property belonging to SNIG.[11]

---

implemented an "operational plan" which effected the voluntary transfer of employees from SNIC's payroll to SNIG's payroll. Afterwards, they "became employed for future payroll purposes only by [SNIG]." Pursuant to the plan, the "entire employee population" of Insolvent Companies were transferred to SNIG and its noninsurance subsidiaries, SNIA and SNIS. These employees, however, continued to provide services necessary for the continued operation of Insolvent Companies. Also transferred were the data processing equipment, software, telephone lines, fixtures, and leases of premises which were necessary for the business operations of Insolvent Companies.

[11] Seaman's lack of standing obviates the need to reach the issue of Commissioner's capacity to be sued as a "person" under the federal Civil Rights Act (42 U.S.C. § 1983).

VIII. E-mail Privacy Invasion Not Cognizable Where No Proof of Claim

Seaman contends he had a protectable privacy interest in his e-mails, which Commissioner abridged by reading, printing, and disseminating these private e-mails. We do not reach the merits of his contention, which is not before us.

We conclude a claimant is foreclosed from raising a new claim in the OSC proceeding, because a proof of claim presented to Commissioner in the first instance is a prerequisite to judicial relief.

The record reflects Seaman raised his e-mail claims in supplemental pleadings filed in the OSC proceeding before the trial court. His judicial request for redress regarding the asserted privacy invasion of his e-mails by Commissioner is not cognizable, because that claim was not presented in the first instance to Commissioner on the requisite proof of claim form (§§ 1023, subd. (a), 1024).

IX. Remaining Issues Moot

This disposition makes it unnecessary for us [sic] address whether the proofs of claim should have been allowed as Class 1 claims rather than under a lower preference class; whether Commissioner failed properly to investigate any proof of claims; and whether the absence of administrative procedures for discovery, a hearing, and notice of the basis for Commissioner's decision rendered rejection of their proofs of claim infirm.

DISPOSITION

The judgment is affirmed. The purported appeal from the order denying reconsideration is dismissed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

BOREN, P.J.

We concur:

ASHMANN-GERST, J.

SUZUKAWA, J.**

** Judge of the Los Angeles Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

INSURANCE COMMISSIONER OF THE STATE OF CALIFORNIA, Applicant, v. SUPERIOR NATIONAL INSURANCE COMPANY, Respondent.	Case No: BS061974 Consolidated with: BS061975 BS062171 BS062173 BS063746 STATEMENT OF DECISION AND ORDERS ON OSC PROCEEDINGS RE: CLAIMS OF THOMAS BOGGS, WILLIAM GENTZ, ROBERT NAGLE, ARNOLD SENTER, J. CHRIS SEAMAN, LOUIS CARON, EDWARD SHOOP, AND DOUGLAS ROCHE
AND CONSOLIDATED PROCEEDINGS	(Filed: Oct. 20, 2003)

I.

BACKGROUND

The Court set orders to cause as to why the claims filed by Thomas Boggs, William Gentz, Robert Nagle, Arnold Senter, J. Chris Seaman, Louis Caron, Edward Shook, and Douglas Roche (hereinafter sometimes referred to as "Named Claimants") against Superior National Insurance Group, Inc. (referred to herein as "SNIG" or "SNTL"), and which had been rejected by the Insurance

Commissioner, should not now be allowed. The named claimants, pursuant to Insurance Code §§ 1032, et seq., have all filed applications with the Court, seeking to have the Court issue Orders to Show Cause why their proofs of claim previously rejected by the Commissioner should not be allowed by order of the Court.

California Insurance Code § 1032 provides that "[w]hen a claim is rejected by the commissioner, written notice of rejection shall be given by mail, addressed to the claimant at the address set forth in his claim. Within thirty days after the mailing of the notice the claimant may apply to the court in which the liquidation proceeding is pending for an order to show cause why the claim should not be allowed."

Insurance Code § 1033, in turn, sets forth a hierarchy of those claims entitled to priority, in the following order:

(1) Expense of administration.

(2) All claims of the California Insurance Guarantee Association or the California Life and Health Insurance Guarantee Association, and associations or entities performing a similar function in other states, together with claims for refund of unearned premiums and all claims under insurance and annuity policies or contracts, including funding agreements, of an insolvent insurer that are not covered claims.

(3) Claims having preference by the laws of the United States.

(4) Unpaid charges due under the provisions of Section 736.

(5) Taxes due to the State of California.

(6) Claims having preference by the laws of this state.

(7) Claims of creditors not included in paragraphs (1) to (6), inclusive.

(8) Certificates of contribution, surplus notes, or similar obligations, and premium refunds on assessable policies.

(9) The interests of shareholders or other owners in any residual value in the estate.

Ordinarily, the Commissioner's actions (here, in rejecting a claim) are judged under an abuse of discretion standard – "was the action arbitrary, i.e., unsupported by a rational basis, or is it contrary to specific statute, a breach of the fiduciary duty of the conservator as trustee, or improperly discriminatory?" *In re Executive Life Ins. Co.* (1995) 32 Cal.App.4th 344, 358. Thus, under normal circumstances, these proceedings are in the nature of a writ of mandate proceeding and the Court would be effectively confined to the administrative record. In other words, the Court would be limited to considering the claims submitted and the documentation which accompanied those claims or that was in the possession of the Commissioner when the claims were denied. *Garamendi v. Mission Ins. Co.* (1993) 15 Cal.App.4th 1277.

At the October 3, 2003 hearing, however, the Commissioner stipulated with the Claimants that the Court would be able to consider all evidence Claimants presented at the hearing for those claims which the Claimants in fact submitted to the Commissioner for consideration. The Commissioner also withdrew his evidentiary objections, and agreed to allow the Court to proceed on the merits. Accordingly, the Court, in issuing this Statement of Decision, has

considered all relevant, competent, and admissible evidence presented in anticipation of this hearing on those actual claims which were submitted to and rejected by the Commissioner.

There are eight (8) executives who have had their claims rejected by the Commissioner, and who have applied for Orders to Show Cause as to why their rejected claims should not be allowed. The Claimants all contend that their claims are entitled to the highest priority – expenses of administration of the liquidation of the Subsidiary Companies.[1] These claims can be broken down into five (5) broad categories:

(1) Claims for severance, paid time off (PTO), and other benefits;

(2) Claims for "Secret Severance", wrongful termination and breach of the implied covenant of good faith and fair dealing (Claimant Roche only);

(3) Claim for indemnification arising out of the *Hannover* litigation (claimant Seaman only);

(4) Claims for quantum meruit, interference with prospective economic advantage, interference with contractual relations, and abuse of process (claimant Seaman only); and

(5) Claim for civil/Constitutional rights violations (claimant Seaman only).

---

[1] The Subsidiary Companies are Superior National Insurance Company, Superior Pacific Casualty Company, California Compensation Insurance Company, Combined Benefits Insurance Company, and Commercial Compensation Casualty Company.

II.

EXECUTIVE CLAIMANTS' CLAIMS FOR SEVERANCE, PAID TIME OFF (PTO), AND OTHER BENEFITS

The executive claimants filed claims for severance pay, PTO, and other benefits with the Commissioner, who rejected those claims.

PTO Claims

According to the executive claimants, the PTO claims were incurred prior to conservation of the Subsidiary Companies. The executive claimants also contend that the PTO claims are statutory, and are not the same claims before the bankruptcy court in the concurrent bankruptcy proceedings. In all, the executive claimants are seeking over $170,000 for the PTO claims that were due and payable at the time of discharge pursuant to Labor Code §§ 201(a), 203, 218.5, and 218.6, plus penalties, interest, and attorneys' fees, to the extent authorized by statute. The Commissioner takes the position that the executive claimants are making the same claims in the instant OSC as they did in the bankruptcy proceedings. Even so, the Commissioner contends that PTO claims would receive Class 6 priority under the hierarchy established under Insurance Code § 1033 and are statutorily limited to $4600.

The key question is this: by whom were the executive claimants employed? If the claimants were in fact employed by SNIG (which was not subject to the orders of conservation or liquidation), then SNIG itself is responsible for paying any accrued PTO benefits.

The Court turns to principles of contract interpretation. As a matter of contractual interpretation, the whole of a contract is to be taken together, so as to give effect to every part, if reasonably practicable, each clause helping to interpret the other. Civil Code § 1641. A contract may be explained by reference to the circumstances under which it was made, and the matter to which it relates. Civil Code § 1647. "For the proper construction of an instrument, the circumstances under which it was made, including the situation of the subject of the instrument, and the parties to it, may also be shown, so that the judge be placed in the position of those whose language he is to interpret." CCP § 1860. "A contract must be interpreted as to give effect to mutual intention of the parties as it existed at the time of contracting, so far as the same is ascertainable and lawful." Civil Code § 1636, "When a contract is reduced to writing, the intention of the parties is to be ascertained from the writing alone, if possible; subject, however, to the other provisions of this title."

The employment contracts of Executive Claimants Boggs, Gentz, Nagle, Seaman, and Senter, and the Change of Control Agreement of Claimant Shoop, are attached as the Commissioner's Exhibits 14 and 16-20. Applying the principles of contract interpretation cited above, the Employment Agreements, made as of November 17, 1999, state they are "by and between SUPERIOR NATIONAL INSURANCE GROUP, INC. ('Superior National'), a Delaware corporation" and each of the individual claimants. ¶1 of each Agreement states in parentheses that "reference herein to Superior National *shall also mean each of the subsidiary companies of Superior National.*") (Emphasis added.) In his Declaration, Mr. Cooper states at ¶3:

> As the chairman of the Compensation Committees of the boards of directors of SNTL and each of its subsidiary companies, I instructed the General Counsel of SNTL, Robert E. Nagle, to draft an Employment Agreement that would legally bind not only SNTL but also each of its subsidiaries to employ each of the aforesaid people as employees and officers of SNTL and each of its subsidiaries . . . , to provide for a severance benefit upon a change in control or the conservation of the Insurance Companies, to provide a termination benefit when the agreement was terminated early, and such other provisions to assure that the interests of these key employees and of SNTL and its subsidiaries would remain aligned.[2]

Significantly, however, none of the Agreements are signed on behalf of *any* of the Subsidiary Companies. Instead, they are signed by J. Chris Seaman in his capacity as President and Chief Executive Officer of *Superior National Insurance Group. Inc.* and/or by William Gentz in his capacity as Chairman of the Board of *Superior National Insurance Group, Inc.*

Moreover, ¶1 of the Agreement defines the role each of each of the Executive Claimants, wherein each of the Executive Claimants agreed "to exercise and perform faithfully and to the best of the Employee's ability and experience on behalf of Superior National the powers and duties customarily exercised and performed by a [officer and/or director title] *of an insurance group.*" (Emphasis added.) In other words, the Employment Agreement did

---

[2] Declaration of Bard Cooper, ¶3, submitted in support of Chris Seaman's Application.

not purport to define the Executive Claimants' roles as directors or officers of any of the insurance companies which ultimately went into liquidation.

The notion that the named Executive Claimants were employed by SNIG, and not the Subsidiary Companies, also is demonstrated by the memo from Bob Kamrath, Vice President of Human Resources.[3] Kamrath states that effective January 1, 2000, Superior National would use SNIG, SN Insurance Administrators, Inc. (SNIA) and SN Insurance Services, Inc. (SNIS) as the principal payroll companies. However, the employees assigned to the SNIG payroll included corporate senior staff and corporate administration. The Executive Claimants fall into both categories. This is further evidence that the Employment Agreements were with SNIG, and not with any of the individual Subsidiary Companies.

For these reasons, the terms of the Employment Agreements demonstrate that they were not entered into on behalf of any of the liquidated Subsidiary Companies, and thus, there would be no "vesting" of any of these claimants' rights under Insurance Code § 1019. The testimony of Mr. Cooper, cited above, and that of Mr. Nagle (counsel for SNTL) explaining that the "intent" of the parties was to bind the Subsidiary Companies contradicts the terms of the Agreements (since it was not signed by any party on behalf of the Subsidiary Companies) and is inadmissible parol evidence.

Even if the executive claimants were concurrently employed by SNIG and the Subsidiary Companies at the

---

[3] Exhibit 21 to Commissioner's Opposition to OSC.

time of the liquidation, the Court would still be inclined to deny the claims as Priority 1 claims. The evidence demonstrates that the executive claimants were terminated from their positions as officers or directors of the companies in liquidation effective March 8, 2000, and that they continued their employment with SNIG/SNTL. In exercising its equitable powers in these liquidation proceedings, it would be inappropriate to charge the estates of the liquidating insurance companies when claimants are pursuing similar claims against SNIG/SNTL in the bankruptcy court.

Exhibit 27 to the Commissioner's Opposition is the Liquidation Order entered by Judge Rothschild on September 26, 2000. Paragraph 3 of the order authorizes the Commissioner, as Liquidator, to honor as expenses of administration all expenses incurred by the Conservator and presently unpaid. Paragraph 12 states that the rights and liabilities of claimants, creditors, and all other persons interested in the assets of the Subsidiary Companies would be fixed as of the date of entry of the order. Paragraph 10 gives the Liquidator power to "assume or reject, or to modify, any executory contracts." Paragraph 10 further states that "[a]ll executory contracts that are not expressly assumed by the Liquidator *shall be deemed rejected*" (emphasis added), and gives rejected claimants the power to file their proof of claim against the Estate in accordance with Insurance Code § 1010, et seq. The Commissioner claims that since it did not "expressly assume" any of these Employment Agreements, they are deemed rejected and are thus not administration expenses or necessary expenses of preserving the estate under the analogous Bankruptcy Code provision (11 U.S.C. § 503(b)(1)(A)).

The Court must independently determine whether the Commissioner actually did assume these Agreements. If the Commissioner did assume the Employment Agreements, they would qualify as necessary expenses of preserving the estate/expenses of administration. The evidence indicates that the Commissioner did not assume the Employment Agreements. The Commissioner's Exhibit 28 consists of three letters dated March 8, 2000 and addressed to Executive Claimants Nagle, Seaman, and Caron. In each of these letters, the Deputy Commissioner states that "[p]ursuant to the Commissioner's authority under the seizure order, *you are terminated as an employee of the* [seized or conserved] *Companies and have been removed from the office* [stating each particular office the terminated Executive Claimants held.]" The Executive Claimants maintain that this constituted a retroactive termination (i.e., as of March 6, 2000) of their status as officers of the Conserved Companies, but not a rejection of their respective employment agreements (thereby automatically triggering severance and PTO benefits).[4] This argument flies in the face of the explicit language of Larsen's letter – that the Executives Claimants were terminated "as an employee" of the Subsidiary Companies *and* that they were removed as directors. The Court is not persuaded by the Executive Claimants' argument on this point.

The Executive Claimants cite to a letter dated April 28, 2000 from Cynthia Larsen of Orrick, Herrington, & Sutcliffe (counsel for the Conservation and Liquidation

---

[4] Opposition of Bogs Claimants at 18:3-7.

Office) to Mr. Nagle.[5] In that letter, Larsen states in applicable part:

> [W]ith respect to your request concerning your desire that SNIG's senior management be free of certain provisions of your employment agreements, the Commissioner has a continuing fiduciary duty to marshal and safeguard the rights and assets of the conserved estates. **Accordingly, the Conservator is not at this time in a position to relieve you of contractual duties which may be owed to the conserved insurers, absent an appropriate exchange of value.** (Bold added.)

According to the Executive Claimants, this language evidences an intent on behalf of the Conservator to assume the Employment Agreements. As the Commissioner points out, however, Nagle responded in correspondence[6] stating "I am in receipt of your April 28, 2000 letter. *The Conservator has made it completely clear that he has no desire for former senior management to have anything to do with the on going conserved companies.*" (Emphasis added.) Nagle admits, in effect, that the Commissioner has *not* assumed the Employment Agreements. Again, the Court is not persuaded by the Executive Claimants' argument on this point.

The Executive Claimants also assert that during negotiations with Kemper Insurance, the Commissioner acceded to Kemper's demand that it would not sign a settlement agreement[7] without a 30-month restrictive

---

[5] Exhibit 30 to the Commissioner's Opposition to OSC.

[6] Exhibit 31 to the Commissioner's Opposition to OSC.

[7] Commissioner's Exhibit 32.

covenant applying to Gentz, Senter and Seaman. This, according to the Executive Claimants, demonstrates that the Commissioner "ratified, reaffirmed and extended the non-compete provisions contained in Claimants' Employment Agreements."[8] The Court rejects this contention. There is no indication of any ratification of the Employment Agreements in the Kemper settlement. To the contrary, the Claimants received substantial benefit from the Kemper settlement agreement in the form of broad form releases from future liability for their past conduct.

The notion by the Executive Claimants – that they provided services by assisting the Commissioner in litigation – appears to be undermined by the language at page 15 of the Kemper Settlement Agreement which requires that "[t]he parties who ultimately employ any of the former employees of the Conserved Companies or Debtors agree to provide reasonable access to any such former employees for the purpose of assisting other Parties in [litigation.]" This agreement was signed by Executive Claimant J. Chris Seaman himself on behalf of SNIG. Thus, the services of former employees were specifically covered under the Settlement Agreement.

Fraudulent Transfers?

Insurance Code § 1034.1(a) provides:

> Every transfer made or suffered and every obligation incurred by a person proceeded against within one year prior to the filing of a successful petition for conservation or liquidation under

[8] Boggs Claimants' Opposition at 18:21-22.

> this article is fraudulent as to then existing and future creditors if made or incurred without fair consideration, or with actual intent to hinder, delay, or defraud either existing or future creditors.

The Commissioner's position is that the November 1999 Employment Agreements were made with the intent to defraud future creditors, and that they are therefore voidable under § 1034.1(a). However, given the Court's finding that the Commissioner did not assume the employment agreements, the Court need not make factual determination that the transfers were or were not fraudulent.

Was the Denial of Executive Claimants' Paid Time Off "Discriminatory"?

The Executive Claimants assert that claims of equal standing must be treated equally and fairly under the priority system set up by the Insurance Code. However, Executive Claimants Gentz, Nagle, Seaman, and Senter were discharged on the first day of conservation, as evidenced by the March 3 letter the Commissioner sent to all employees.[9] The Commissioner further represents that those employees and executives who did receive PTO were not terminated on the first day of conservation and were employed by the Commissioner during conservation. The Commissioner obtained separate approval to pay these employees PTO benefits as a condition of their continued employment in the Liquidator's Verified Application for Authority to Implement "Personal Time Off" Program.[10]

---

[9] Exhibit 33 to Commissioner's Opposition to OSC.

[10] Commissioner's Exhibit 35 in Opposition to OSC.

Paragraph 16 of the Verified Application notes that with respect to the 277 individuals who were initially asked to stay on and continued to perform services for SNICIL as SNICIL employees, such employees had been accumulating PTO prior to conservation and liquidation. The Court finds the Commissioner's rejection of the PTO claims of Gentz, Nagle, Seaman, and Senter was not discriminatory or without justification, given the Court's finding that the Claimants were not employed by the Commissioner. In this regard, the Court also recognizes that such claims may be, and are appropriately being, made against SNIG in the bankruptcy proceedings.

Bankruptcy Court Rulings as to Claimants Boggs and Caron

The next issue is whether the bankruptcy court's rulings sustaining the objections of the Oversight Committee to Boggs' and Caron's claims against SNIG have a collateral estoppel effect on the claims they assert here. The Commissioner refers the Court to the Corbett Declaration[11] and Boggs' and Caron's proofs of Claims.[12] Boggs asks for $680,400 and Caron requests $245,000. Exhibit 41 is the Order sustaining certain objections of the Oversight Committee. The Court (Judge Geraldine Mund) sustained the objections as to Boggs and Caron, and further ordered that these claimants be allowed a general unsecured claim in the amount of $183,547.30 and $214,375.01, respectively. Consequently, as to claimants Boggs and Caron, the Court finds these PTO claims have been adjudicated. The

[11] Exhibit 40 to Commissioner's Opposition to OSC.

[12] Exhibits 3 and 4 to Commissioner's Opposition to OSC.

Court notes further that claimants Nagle, Seaman, Senter and Shoop have substantially similar claims pending before the Bankruptcy Court in the SNIG bankruptcy proceedings. There is no evidence before the Court that the pre-conservation PTO claims have been withdrawn. To the contrary, the Corbett Declaration[13] states that Claimants Seaman, Gentz, Nagle, and Senter "received payment of pre-petition wages, post-petition in excess of the $4,300 statutory cap for pre-petition claims under section 507(a)(3) of the Bankruptcy Code."

Severance Claims

The Court confirms the Commissioner's denial of severance. As discussed *supra*, the Court finds that the employment agreements were between the claimants and SNIG. Even so, the Court finds the Commissioner did not assume the Agreements.

Conclusion on severance claims, PTO claims, and other benefits

For the foregoing reasons, the Court confirms the Commissioner's denial of the Executive Claimants' claims for PTO, severance, and other benefits. The Court determines the Employment Agreements were with SNIG, and not the Subsidiary Companies, and the Commissioner was therefore not required to pay any of these claims. Even if the Court found the Employment Agreements were with the Subsidiary Companies, the Commissioner did not

[13] Exhibit 40 to Commissioner's Opposition to OSC.

assume those Agreements under the Liquidation Order. In exercising its equitable powers in these liquidation proceedings the Court specifically declines to permit claims that may be pursued by the Claimants in the SNIG bankruptcy proceedings.

III.

CLAIMANT ROCHE'S CLAIMS FOR SECRET SEVERANCE, WRONGFUL TERMINATION AND BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING

"Secret Severance" Claim

The basis for the first part of Mr. Roche's claim is that there was a "secret" system of paying employees severance pay. According to Roche, under the terms of the plan, the Insurance Companies paid severance pay, even to employees terminated "for cause," consisting of two weeks of salary for each year of service for regular employees, three weeks of salary for each year of service for employees of a higher rank, and four weeks of salary for each year of service to officers.[14] Additionally, Roche contends the Commissioner never terminated this plan, but instead promised he would conduct "business as usual" and pledged to maintain employee benefit plans in his letters dated March 3, 2000 and March 24, 2000.[15]

However, as discussed in the Court's discussion of the PTO/severance claims *supra*, the Commissioner was only obligated to pay out claims as provided under the

---

[14] Claimant Roche's OSC at 8:20-24.

[15] Exhibits 33 and 34 to Commissioner's Opposition to OSC.

Liquidation Order. Again, ¶ 10 of the Liquidation Order states that "[a]ll executory contacts that are not expressly assumed by the Liquidator shall be deemed rejected", and gives rejected claimants the power to file their proof of claim against the Estate in accordance with Insurance Code § 1010, et seq. The statement in the March 3 and 24, 2000 letters, in Exhibits 33 and 34, that the Companies would operate in a "business as usual" fashion while the Commissioner controlled the companies' operations does not indicate that the Commissioner expressly assumed these 'secret' severance agreements. There is no evidence that the Commissioner was ever aware of these "secret" agreements. Accordingly, Roche's analogy to 11 U.S.C.A. § 365, which states in applicable part that a debtor that assumes a contract is obliged to cure any defaults under the contract, compensate the obligee, and provide assurances of performances in the future, is not persuasive. Since there is no evidence that the Commissioner was aware of the "secret" severance agreements, the Court upholds the denial of Roche's "secret severance" claim.

Wrongful Termination

Roche's wrongful termination claim is based on his position that the Commissioner: 1) terminated his services early, ostensibly for cause, but actually without cause; 2) terminating his employment without providing him an opportunity to correct his conduct or to explain why his conduct did not constitute cause; 3) terminating his employment without following the Insurance Companies' policies and practices; 4) falsely claiming that the Insurance Companies had directed its managers not to communicate with employees without prior approval; 5) terminating his employment for communicating with

employees; 6) failing to follow its policies and procedures; and 7) failing to pay him his severance pay due under the severance pay plan.

The Commissioner does not dispute that the termination of Roche was without cause. Instead, the Commissioner references the SNIG Employee Handbook dated January 1999. In particular, the Commissioner notes that Roche's employment was "at-will," and according to page 2 of the Handbook[16], "[e]mployment with the Company is employment at-will for no specific term." "Employment at will", as defined in the Handbook, "means an employee's employment may be terminated for any reason, at any time, with or without cause and with or without advance notice by the employee or the Company." The Handbook further states that "[n]othing in this Handbook or in any document or statement shall limit your right or the Company's right to terminate employment at-will or to change your terms of employment with the Company."

Roche's statement that his Employment Agreement "arises from the terms of the Employee Handbook, as modified by the course of conduct and practice of the Insurance Companies during his employment"[17], as a legal argument, has merit. In *Foley v. Interactive Data Corp.* (1988) 47 Cal.3d 654, 680, the California Supreme Court observed that "[i]n the employment context, factors apart from consideration and express terms may be used to ascertain the existence and content of an employment agreement, including 'the personnel policies or practices of the employer, the employee's longevity of service, actions

---

[16] Commissioner's Exhibit 44.

[17] Roche's OSC at 13:14-15.

or communications by the employer reflecting assurances of continued employment, and the practices of the industry in which the employee is engaged.'" (Citing *Pugh v. See's Candies, Inc.* (1981) 116 Cal.App.3d 311, 327).

In ¶8 of his Declaration, Roche states:

> I understood from the practices of SNTL and its insurance company subsidiaries that as long as I performed my work and did not violate the Company Code of Conduct described in pages 32 through 46 of the Employee Handbook dated January 1999 . . . , which would justify my termination for cause, that I would remain an officer and director of the insurance company subsidiaries. . . .

Roche's statement on the "practices" of SNTL is essentially echoed in ¶8 of J. Chris Seaman's Declaration in support of Roche's OSC. Paragraph 7 of Robert Nagle's Declaration (former General Counsel of SNIG and SNIC) also chronicles the personnel policies maintained "either in writing or through their custom and practice . . . "

The Court is unpersuaded by, and overrules, the Commissioner's parol evidence objection under CCP § 1856(a). This provision states that "[t]erms set forth in a writing *intended by the parties as a final expression of their agreement* with respect to such terms as are included therein may not be contradicted by evidence of any prior agreement or of a contemporaneous oral agreement." The Employee Handbook[18] itself states at the bottom of page 2 that "[t]his handbook *is not an employment contract, nor is it intended to otherwise create any legally enforceable*

[18] Exhibit 44 to the Commissioner's Opposition to the OSC.

obligations on the part of the Company or its employees." (Emphasis added.) The Handbook, by its very terms, is not a final expression of the parties' agreement.

Given the Declarations submitted in support of Roche's OSC, and in light of the possibility that the terms of an employment contract may be implied by the unwritten policies of the employer, the Court finds it would premature to reject Roche's wrongful termination claim at this time. Instead, the Court orders further briefing on Roche's wrongful termination claim. Specifically, the parties should address the "policy and practice" of the Subsidiary Companies alleged by Roche, Seaman, and Nagle, and how the "policy and practice" of the Subsidiary Companies supports Mr. Roche's wrongful termination claim.

Breach of the Implied Covenant of Good Faith and Fair Dealing

"'A breach of the implied covenant of good faith and fair dealing in employment contracts is established whenever the employer engages in 'bad faith action extraneous to the contract, combined with the obligor's intent to frustrate the [employee's] enjoyment of contract rights.'" *Foley, supra,* 47 Cal.3d at 698 (citing *Koehrer v. Superior Court* (1986) 181 Cal.App.3d 1155, 1171). However, "with regard to an at-will employment relationship, breach of the implied covenant cannot logically be based on a claim that a discharge was made without good cause. If such an interpretation applied, then all at-will contracts would be transmuted into contracts requiring good cause for termination. . . ." *Foley,* 47 Cal.3d at 698 n.39.

For the reasons described *supra* on Roche's wrongful termination claim, the Court finds it is premature to make a determination that this was truly an at-will employment contract. The Court orders further briefing on Roche's claim for breach of the implied covenant of good faith and fair dealing and on the "policy and practice" argument.

IV.

SEAMAN'S CLAIM FOR INDEMNIFICATION

Claimant J. Chris Seaman seeks indemnity arising out of the *Insurance Corporation of Hannover, et al. v. Business Insurance Group, Inc., et al.* litigation, which was ordered related to the liquidation cases.

As Seaman notes in his OSC, there are essentially three sources upon which his indemnity claim rests:

> *1) under Corporations Code § 317(a), which defines "agent" as any person who is, or was, a director, officer, employee or other agent of the corporation; indemnity is available where the activities for which they are sued were undertaken for the benefit of the corporate principal "within the common law meaning of agency" rather than as independent contractors for personal benefit.* Channel Lumber Co., Inc. v. Porter Simon *(2000) 78 Cal.App.4th 1222, and under Corporations Code § 317(b), which requires indemnification for expenses actually and reasonably incurred by the agent where the agent prevails.*
>
> 2) under Labor Code § 2802, which provides that an employer shall indemnify the employee "for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or

her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful."

3) Under the Bylaws of CalComp (Article VI, s. 1), requiring CalComp to indemnify Seaman against expenses that he actually and reasonably incurs.

The Court must decide whether Seaman was sued in his capacity as an agent for the Subsidiary Companies at the time of the alleged wrongdoing (November 1999), or as an agent for SNIG during the relevant time period. If Seaman was sued in his capacity as an agent for the Subsidiary Companies, Seaman's indemnification claim would have merit, since, as noted above, agents are entitled to indemnity under Corporations Code § 317(b), Labor Code § 2802, and the By-laws.

¶18 of the *Hannover* Complaint[19] alleges:

Plaintiffs are informed and believe, and on that basis allege, that *at all times relevant to this action, Defendants had actual or ostensible authority to act as agents for each other, and for all of the Insurers, in procuring reinsurance coverage from Plaintiffs,* Defendants, and each of them, were the agents, servants or employees of each other, and in doing the things hereinafter alleged, were acting within the course and scope of their authority as agents, servants, or employees. (Emphasis added.)

[19] Exhibit 47 to the Commissioner's Opposition to the OSC.

The named Defendants in the Complaint are BIG Holding, SNIG, Seaman, and Centre Re.

The allegations in ¶18 would seem to indicate that Seaman acted as an agent for the Insurers, and thus, may be entitled to indemnity. The Court is not persuaded by the Commissioner's argument that the *Hannover* complaint "does not allege that Defendants were the agents of the Insurers [Subsidiary Companies] in committing wrongdoing."[20] The central basis for this alleged wrongdoing under the *Hannover* complaint was that the Defendants engaged in unlawful acts in an attempt to procure the reinsurance coverage.

There are two obstacles to Seaman's indemnity request, however. First, the Plaintiffs entered the treaty on December 9, 1998 under ¶55 of the *Hannover* complaint. Seaman states that it was at this time that he became an officer and director of the three Subsidiary Companies when "the acquisition of the four BIG insurance companies closed on December 10, 1998."[21] If this is true – i.e., that Seaman in fact became the agent for the Subsidiary Companies after Hannover entered into the reinsurance treaty (and hence, after the alleged wrongdoing already occurred) – then Seaman would not have been acting as an agent for the Subsidiary Companies at the time of the alleged wrongdoing, and would not be entitled to indemnity.

---

[20] Commissioner's Opposition at 31:18-19.

[21] Seaman's OSC at 4:3-5.

Additionally, the Bankruptcy Court's Amended Order Granting Motion for Allowance and Payment of Administrative Claim of J. Chris Seaman[22] orders that "the sum of $150,000.00 be paid by the Debtors into an account bearing the name the 'Seaman Defense Fund', with such funds to be used to pay Seaman's already incurred defense costs and to fund both his defense against the HSO Reinsurers' claims and his claim to reinsurance coverage. . . . " The Commissioner also references the Motion for Allowance and Payment of Administrative Claim of Seaman's Defense Costs[23], wherein Seaman also requested the sum of $35,000 in defense costs (in addition to the $150,000 requested, and awarded, in Exhibit 45). It is apparent that the bankruptcy court has approved $150,000 for Seaman's indemnity claims. Both of these factors – the allegations in the *Hannover* complaint and the bankruptcy court's establishment of the Seaman Defense Fund – support the Commissioner's denial of Seaman's indemnity claim, and this Court's refusal to permit the claim.

V.

SEAMAN'S CLAIMS FOR QUANTUM MERUIT, INTERFERENCE WITH PROSPECTIVE ECONOMIC ADVANTAGE, INTERFERENCE WITH CONTRACTUAL RELATIONS AND ABUSE OF PROCESS

These claims deal with Claimant Seaman's alleged entitlement to quantum meruit, and damages for interference with prospective economic advantage, interference with contractual relations, and abuse of process.

---

[22] Exhibit 45 to the Commissioner's Opposition to the OSC.

[23] Exhibit 46 to the Commissioner's Opposition to the OSC.

Insurance Code § 1023(a) states that "[a] claim must set forth, under oath, on the form prescribed by the commissioner: (a) The particulars thereof, and the consideration therefor. . . ." Seaman's claims[24] for quantum meruit, interference with prospective economic advantage, interference with contractual relations, and abuse of process do not specifically appear on the claim forms. Instead, Seaman provides the following description of his claim on the "tort" claim form:

> Damages for wrongful termination of employment, tortious interference with employment (including but not limited to seizure and ejection), libel and slander, breach of employment agreement, including but not limited to salary, benefits, bonuses, and other renumeration.[25]

The "particulars" of Seaman's quantum meruit, interference with prospective economic advantage, interference with contractual relations, and abuse of process claims appear nowhere on the claim form as required by Insurance Code § 1023(a). Consequently, these claims cannot go forward under Insurance Code § 1024 ("[u]nless such claim is filed in the manner and within the time provided in section 1021, it *shall not be entitled to filing or allowance, and no action may be maintained thereon*). (Emphasis added.) The Court upholds the denial of these claims based on the cited statutory provisions, and specifically declines to reach the merits of said claims.

---

[24] Commissioner's Exhibits 9, 10, and 11 in Opposition to the OSC.

[25] Commissioner's Exhibit 9 in Opposition to the OSC.

VI.

SEAMAN'S CLAIMS FOR CIVIL RIGHTS VIOLATIONS, CONSTITUTIONAL VIOLATIONS, SUPPLEMENTAL CLAIM FOR CONSTITUTIONAL VIOLATIONS, INFORMATION PRIVACY ACT VIOLATIONS, AND ELECTRONIC COMMUNICATIONS PRIVACY ACT/FEDERAL WIRETAP ACT VIOLATIONS

Seaman's next claim is for alleged Constitutional and civil rights violations, and supplemental claims for additional Constitutional violations, violations of the Information Privacy Act, and violations of the Electronic Communications Privacy Act/Federal Wiretap Act. Seaman essentially contends that the Court's conservation and liquidation orders did not give the Commissioner "authority to seize the property of third parties (such as SNTL or Seaman) or interfere with their economic rights and expectations."[26]

The claims for violations of the Information Privacy Act, and violations of the Electronic Communications Privacy Act/Federal Wiretap Act were not presented in the proof of claims Seaman filed with the Commissioner and were not timely made. Seaman's applicable Proof of Claim[27] explains the claim as follows:

> Priority I claim for damages for civil rights violations, including but not limited to the 4th and 14th Amendments to the US Constitution. Specifically the illegal search and seizure by the CA Insurance Commissioner as Conservator of

[26] Seaman's OSC on Constitutional Claims at 3:25-26.

[27] Exhibit 10 to Commissioner's Opposition to OSC.

> property and person of J. Chris Seaman without a wan-ant or probable cause, and the abridging of the privileges and immunities of J. Chris Seaman, including the deprivation of his property without due process or equal protection of law.

The claims for Information Privacy Act violations, and Electronic Communications Privacy Act/Federal Wiretap Act violations cannot go forward under Insurance Code § 1024, as they were not mentioned in Seaman's claim form. The Court upholds the denial of these claims based on the cited statutory provisions, and specifically declines to reach the merits of said claims.

The Court will consider the merits of the constitutional claims and civil rights claims. The Conservation and Liquidation Orders are attached as Exhibits 6 and 7 to Seaman's OSC, respectively. Among other things, the Conservation Order of Combined Benefits Insurance Company (which is representative of the conservation orders for all of the conserved companies involved int [sic] these proceedings) authorized the Commissioner "to take possession of all of Combined's assets, books, records, and property, both real and personal, wheresoever situated. . . ."[28] Title of the property and assets of Combined was to be vested in the Commissioner or his successor.[29] Combined and their officers, directors, agents and employees were also directed to deliver to the Commissioner "all assets, books, records, equipment and other property of Combined, wheresoever situated. . . ."[30]

---

[28] Seaman's Exhibit 6 in support of OSC at 2:6-7.

[29] Seaman's Exhibit 6 in support of OSC at 2:8-9.

[30] Seaman's Exhibit 6 in support of OSC at 2:23-25.

Similarly, the Liquidation Order states at ¶2 that the Commissioner "is vested in and to al [sic] of the records, property (real and personal, whether owned, leased, rented or utilized by Respondents [the Subsidiary Companies] under any contract or assignment) and assets (including rights under any license or other arrangement for the use of computer software and/or business information systems) of Respondents then in the possession of Applicant as Conservator, as well as any records, property and assets of Respondents discovered or obtained hereafter wheresoever such assets may be situated."[31]

The primary dispute in Seaman's constitutional claim is whether the Commissioner exceeded his authority by allegedly seizing the property of SNIG and of Seaman himself. The Commissioner vehemently disputes this allegation. Seaman states that on March 3, 2000, employees of the Department of Insurance and an armed deputy sheriff entered SNIG offices in Calabasas. However, in the same breath, Seaman states that "[t]he building lease was in the name of Superior National Insurance Group, Inc., all of the employees at the location were employees of Superior National Insurance Group, Inc., SN Insurance Services, Inc., and SN Insurance Administrators, Inc., and most of the records and equipment at the location were owned by Superior National Insurance Group, Inc. None of these companies were a subject of a court order authorizing their seizure."[32] If the Court were to accept this argument, it would in effect te [sic] accepting an argument that suggest the conserved

---

[31] Seaman's Exhibit 7 in support of OSC at 2:27-3:4.

[32] Seaman's OSC on Constitutional Claims at 4:6-10.

companies had no facilities, employees, equipment, or records, with which they conducted their multi-million dollar insurance business.

There are at least two circumstances which defeat Seaman's Constitutional Claim. First, and most significantly, Seaman lacks standing to assert violations of his own Constitutional rights by virtue of the Commissioner's seizure of SNIG's assets. *Vinci v. Waste Management, Inc.* (1995) 36 Cal.App.4th 1811, 1815 held that the plaintiff in that case lacked standing to bring the antitrust violations claim in his individual capacity, because the only possible injured party was plaintiff's corporation. Although *Vinci* is not specifically on point (this case, unlike *Vinci,* does not deal with potential antitrust violations or an individual's standing to bring an antitrust case), *Vinci* is helpful to the analysis. The Court observed that "[t]he party directly injured by Waste Management's conduct was not plaintiff an individual, but Vinci Enterprises, Inc., a corporation. The remedy lies with the corporation, not the shareholder, *even if the injured shareholder is the sole shareholder.*" *Id.* at 1115 (emphasis added). Thus, even though the Liquidation and Conservation Order did not specifically allow the Commissioner to seize the assets of SNIG, the Court finds Seaman would not have standing to bring a claim for a constitutional violation of his *own* rights for the Commissioner's seizure of SNIG's assets (or for that matter, SNTL Group's assets).

Second, the Commissioner references the Settlement Agreement and Release executed between the Commissioner, the Debtors (SNIG, BIG, SNIS and SNIA) and the Conserved Companies (SNIC, SPCC, QCIC, CBIC and

CCCC).[33] At page 18, the Agreement states in applicable part:

> 3. ***Release of Conserved Companies.*** Also effective upon the entry of the later of both court orders described in Section VI.B.6, the Debtors release the Conserved Companies, the Conservator, the Commissioner and their officers, directors, employees and attorneys, except the entities and individuals or claims reserved in Subsections (c), (d), (e), (f) and (g) as follows:
>
> a. from any and all liability or claim arising out of the alleged conversion of property, employees, etc. or from the takeover of the Debtors' offices.
>
> b. from any and all claims in the estates of the Conserved Companies other than any claim arising out of this Settlement Agreement.

Accordingly, SNIG, as a debtor, has executed a full release of its claims against the Commissioner for the seizure of its property. It should also be noted that in negotiating and executing the Settlement Agreement substantial benefits in the form of releases from liability for past conduct were conferred upon the officers and directors fo [sic] SNIG, including Seaman and the other claimants now before the Court.

Moreover, the Court finds the Commissioner may have had authority to seize the disputed property even without a court order. Insurance Code § 1013, which provides in applicable part:

---

[33] Exhibit 32 to the Commissioner's Opposition to the OSC.

> Whenever it appears to the commissioner that any of the conditions set forth in section 1011 exist or that irreparable loss and injury to the property and business of a person specified in section 1010 has occurred or may occur unless the commissioner so act immediately, the commissioner, *without notice and before applying to the court for any order,* forthwith shall take possession of the property, business, books, records and accounts of such person, and of the offices and premises occupied by it for the transaction of its business, and retain possession subject to the order of the court. (Emphasis added.)

Thus, there was a legal basis for the Commissioner's seizure of property, in addition to the actual Liquidation Order.

With respect to the argument that the Commissioner violated 42 U.S.C. § 1983, the Commissioner argues in his Opposition that state officials sued in their official capacities are not considered persons under the statute, and that Seaman's proof of claim states his claims are against "the CA Insurance Commissioner as Conservator." In *Hafer v. Melo* (1991) 502 U.S. 21, 27, the U.S. Supreme Court held that "[s]tate officers sued for damages in their official capacity are not "persons" for purposes of the [§1983] suit because they assume the identity of the government that employs them. [Citation.] By contrast, officers sued in their personal capacity come to court as individuals. A government official in the role of personal-capacity defendant thus fits comfortably within the statutory term "person." [Citation.]"

The import of *Hafer* is that state officers sued in their official capacity cannot be defendants in a § 1983 suit, but state officers sued in their personal capacities can. Since

the claim was against the Commissioner "as Conservator," the claim was against the Commissioner in his official capacity. Consequently, the Commissioner could not be subject to a § 1983 action under the facts of this case (although the Commissioner could be subject to a § 1983 action if he were sued in his personal capacity).

For the foregoing reasons, the Court finds Seaman's Constitutional and civil rights claims do not have merit, and the Court upholds the Commissioner's denial of these claims.

VII.

CONCLUSION AND ORDER

The Court upholds the Commissioner's denial of the following claims: 1) all Executive Claimants' PTO and severance claims; 2) Claimant Roche's "secret severance" claim; 3) Claimant Seaman's indemnification claim; 4) Claimant Seaman's claims for quantum meruit, interference with prospective economic advantage, interference with contractual relations and abuse of process; and 5) Claimant Seaman's claims for civil rights violations, constitutional violations, supplemental claim for constitutional violations, Information Privacy Act violations, and Electronic Communications Privacy Act/Federal Wiretap Act violations.

With respect to Claimant Roche, the Court finds it is premature to make a determination that this was truly an at-will employment contract. The Court orders further briefing on Roche's claim for breach of the implied covenant of good faith and fair dealing and on the "policy and practice" argument. The parties shall file concurrent briefs

by November 7, 2003. The parties may file concurrent reply briefs by December 1, 2003. Upon reviewing those briefs, the Court will issue a supplemental Statement of Decision on Claimant Roche's remaining claims. No further appearances on the OSC will be necessary.

Dated: October 20, 2003

/s/ Carl J. West
Carl J. West
Judge of the Superior Court

Court of Appeal, Second Appellate District,
Division Two – No. B172394
5139382

IN THE SUPREME COURT OF CALIFORNIA

En Banc

(Filed Jan. 25, 2006)

JOHN GARAMENDI, as Insurance Commissioner, etc.,
Plaintiff and Respondent,

v.

SUPERIOR NATIONAL INSURANCE COMPANY,
Defendant;

J. CHRIS SEAMAN et al., Claimants and Appellants.

Petitions for review DENIED.

Chin, J., was absent and did not participate.

GEORGE
Chief Justice